



**Billing Code:** 4810-25-P

## **DEPARTMENT OF THE TREASURY**

### **31 CFR Part 34**

### **RIN 1505-AC49**

### **Gulf Coast Restoration Trust Fund**

**AGENCY:** Office of the Fiscal Assistant Secretary, Treasury.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of the Treasury is issuing regulations concerning the amounts available to eligible Louisiana parishes from the Gulf Coast Restoration Trust Fund, a fund established by the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). These regulations amend an interim final rule for the RESTORE Act published on August 15, 2014.

**DATES:** Effective October 14, 2014.

**FOR FURTHER INFORMATION CONTACT:** Please send questions by email to [RESTORErule@treasury.gov](mailto:RESTORErule@treasury.gov) or contact Janet Vail, 202-622-6873.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

The RESTORE Act makes funds available for the restoration and protection of the Gulf Coast region through a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund. The trust fund will contain 80 percent of the administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* oil spill. One component of the Act, the Direct Component, sets aside 35 percent of the penalties paid into the trust fund for grants to the State

of Alabama, the State of Mississippi, the State of Texas, the State of Louisiana and 20 Louisiana parishes, and 23 Florida counties. The Direct Component provides an equal amount to each of the five Gulf Coast States, and allocates 30 percent of Louisiana's share to the 20 eligible parishes.

On September 6, 2013, Treasury proposed a rule to implement the Direct Component and four other components in the RESTORE Act. Among its provisions, the proposed rule identified the 20 Louisiana parishes eligible to receive funds under the Direct Component, but not the share of each parish. Treasury requested public comments on the data and methodology for calculating these shares, and received comments from the State of Louisiana and one Louisiana parish.

On July 31, 2014, Treasury proposed a rule identifying the share of each Louisiana parish under the Direct Component, based on a formula in the RESTORE Act and data from the United States Census Bureau and the United States Coast Guard. 79 FR 44325. Treasury considered the comments submitted previously, and opened a new public comment period for 30 days. Treasury received two substantive comments.

After considering public comments, Treasury now issues the regulations as an interim final rule. The rule for Louisiana parishes amends the RESTORE Act rule published on August 15, 2014 (79 FR 48039), which covers other aspects of the Direct Component and the Act. Both rules take effect on October 14, 2014. Treasury will publish a final, comprehensive rule for the RESTORE Act in the near future.

## **II. Public Comment and Summary of the Interim Final Rule**

In the July 2014 proposed rule, Treasury proposed an allocation for each eligible Louisiana parish using a statutory formula that has three elements: (a) 40 percent based on the

weighted average of miles of parish shoreline oiled, (b) 40 percent based on the weighted average of the population of the parish, and (c) 20 percent based on the weighted average of the land mass of the parish. 33 U.S.C. 1321(t)(1)(D)(i). One commenter recommended that Treasury give greater weight to miles of oiled shoreline (60 percent) and less weight to population (30 percent) and land mass (10 percent). The commenter asserted that its formula would be more fair to those parishes that were most impacted by the spill.

The formula in the proposed rule comes directly from the RESTORE Act. Treasury does not have discretion to change the formula in order to favor parishes with more oiled shoreline.

For the three elements in the formula, Treasury's proposed rule used government data to determine the share of each parish. For the first element, Treasury used data from the United States Coast Guard showing the number of miles of parish shoreline oiled between 2010, the initial year of response to the *Deepwater Horizon* spill, and July 6, 2012, the date of enactment for the RESTORE Act. According to the Coast Guard, the data were gathered using the Shoreline Clean-up Assessment Technique (SCAT), a systematic method for surveying an affected shoreline after an oil spill.<sup>1</sup> The second element is the weighted average of the parish population. Treasury used 2012 population estimates for each parish published by the United States Census Bureau.<sup>2</sup> The third element is the weighted average of the parish land mass.

Treasury used data from 2010, the most recent available from the United States Census Bureau.<sup>3</sup>

The Act does not specify the year Treasury should use for oiled shoreline or population. The proposed rule used oiled shoreline data collected between 2010 and 2012, and population

---

<sup>1</sup> SCAT data are appropriate for determining the share of each Louisiana parish under the relevant standards of the Direct Component in the Act. Treasury takes no position on the data that may be appropriate for other uses in connection with ongoing litigation or natural resource damage assessments.

<sup>2</sup> These estimates are available at <http://factfinder2.census.gov/bkmk/table/1.0/en/PEP/2013/PEPANNCHG.ST05/0400000US22>.

<sup>3</sup> The data are available at <http://quickfacts.census.gov/qfd/states/22000.html>.

data for 2012, thereby fixing the share of each parish in the year of enactment. Treasury received two comments on this data. One Louisiana parish recommended that Treasury use population data from 2010, because this data is closer in time to the *Deepwater Horizon* incident. Another parish preferred 2013 population estimates, because these estimates are closer in time to publication of the regulation. Neither commenter addressed Treasury's oiled shoreline data.

Treasury's proposed rule used 2012 data for both population and oiled shoreline, believing this to be a reasonable choice that furthers Congress's purposes. While 2010 data would be closer in time to the oil spill, there is no indication that Congress gave this fact any importance. There is also no indication that Congress intended to base each parish's share on population changes and oiling occurring after enactment. Treasury believes that it is reasonable to use 2012 data for population and oiling, because that data best represents conditions in Louisiana when Congress passed the Act. It is notable that Congress expected procedures for implementing the Act would be completed shortly after enactment, including procedures concerning each parish's share. RESTORE Act, Pub. L. 112-141 sec. 1602(e), 126 Stat. 588. The Act refers to "parish shoreline oiled" in the past tense. 33 U.S.C. 1321(t)(1)(D)(i)(II)(aa). Using data from later years would produce results that Congress could not have foreseen in 2012. Because population in 2013 went up for some parishes and down for others, using 2013 data would increase some parish shares and decrease others with little correlation to the miles of oiled shoreline. Accordingly, Treasury interprets the Act as referring to shoreline oiled before July 6, 2012, and to parish populations in 2012.

Using the data described above and the statutory factors, Treasury determined each parish's share with the following formula: Parish allocation = (40% \* (parish miles oiled/sum of all oiled shoreline for eligible parishes)) + (40% \* (parish population/sum of all population for

eligible parishes)) + (20% \* parish land mass/sum of all land mass for eligible parishes). A detailed description of the data Treasury used to determine each parish's share is available in the docket for the interim final rule at <http://www.regulations.gov>, and at <http://www.treasury.gov/services/restore-act/Pages/default.aspx>. The resulting shares, which are unchanged from the proposed rule, are listed in the interim final rule.

### **III. Procedural Requirements**

#### **A. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Treasury previously certified that the interim final rule for the entire Act, published on August 15, 2014, will not have a significant economic impact on a substantial number of small entities. While that rule describes procedures concerning the allocation and expenditure of amounts from the trust fund, most of these requirements come from the Act itself or other Federal law, including the total allocation due to Louisiana parishes under the Direct Component.

Treasury certifies that the interim final rule for Louisiana parishes will not have a significant impact on a substantial number of small entities. This rule affects only 20 Louisiana parishes, of which six meet the definition of a small entity under the RFA. Even if a substantial number of small entities was affected, any economic impact of this interim final rule would be minimal. The interim final rule is limited to allocating funds to eligible Louisiana parishes according to a statutory formula, and does not impose any new obligations on these parishes.

## **B. Regulatory Planning and Review (Executive Orders 12866 and 13563)**

The interim final rule for the RESTORE Act, published on August 15, 2014, is a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. The notification for that rule includes a Regulatory Impact Assessment, which covers any economic impact incident to the interim final rule for Louisiana parishes. The interim final rule for Louisiana parishes has been designated a significant regulatory action, although not economically significant, and has been reviewed by the Office of Management and Budget.

## **C. Administrative Procedure Act**

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) provides that agency rules should become effective 30 days after publication in the Federal Register. See 5 U.S.C. 553(d). The APA, however, allows agencies to dispense with a delayed effective date when the agency finds that good cause exists. 5 U.S.C. 553(d)(3). In this case, Treasury finds that good cause exists to effectuate this rule on October 14, 2014. As discussed earlier in the preamble, this rule for Louisiana parishes amends the RESTORE Act interim rule that was published on August 15, 2014 (79 FR 48039). The August 15, 2014 interim rule covers other aspects of the Direct Component and the Act and takes effect on October 14, 2014. It would be contrary to the public interest to make the RESTORE Act funds available to some recipients ahead of others. So that all entities eligible to receive Direct Component funds are treated equally, Treasury believes good cause exists to make this parishes rule effective on the same date as the August 15, 2014 interim rule.

## List of Subjects in 31 CFR Part 34

Coastal zone, Fisheries, Grant programs, Grants administration, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts, Wildlife.

For the reasons set forth in the preamble, the Department of the Treasury amends 31 CFR subtitle A, part 34, to read as follows:

### **PART 34 – RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES**

1. The authority citation for part 34 continues to read as follows:

Authority: 31 U.S.C. 301; 31 U.S.C. 321; 33 U.S.C. 1251 *et seq.*

2. In §34.302, revise the section heading and add a second sentence in paragraph (e) to read as follows:

#### **§ 34.302 Allocation of funds – Direct Component.**

\* \* \* \* \*

(e) \* \* \* The share of each coastal zone parish is as follows: Ascension, 2.42612%; Assumption, 0.93028%; Calcasieu, 5.07063%; Cameron, 2.10096%; Iberia, 2.55018%; Jefferson, 11.95309%; Lafourche, 7.86746%; Livingston, 3.32725%; Orleans, 7.12875%; Plaquemines, 17.99998%; St. Bernard, 9.66743%; St. Charles, 1.35717%; St. James, 0.75600%; St. John the Baptist, 1.11915%; St. Martin, 2.06890%; St. Mary, 1.80223%; St. Tammany, 5.53058%; Terrebonne, 9.91281%; Tangipahoa, 3.40337%; and Vermilion, 3.02766%.

\* \* \* \* \*

---

David A. Lebryk,  
Fiscal Assistant Secretary

[FR Doc. 2014-24283 Filed 10/09/2014 at 8:45 am; Publication Date: 10/10/2014]